



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

CHARLES A. RICHMAN
Commissioner

INTERIM ORDER

June 28, 2016 Government Records Council Meeting

Anonymous
Complainant

Complaint No. 2015-107

v.

Burlington Township (Burlington)
Custodian of Record

At the June 28, 2016 public meeting, the Government Records Council ("Council") considered the June 21, 2016 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that:

1. The issue of whether the Custodian unlawfully denied access to OPRA requests made in 2014 should be held in abeyance until the Appellate Division has ruled on the consolidated appeal in Scheeler, Jr. v. Office of the Governor, et al., Docket No. A-1236-14T3. Such an action will benefit all parties and give the GRC an adequate opportunity to apply the Appellate Division's decision to this complaint.
2. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the further adjudication of this complaint.

Interim Order Rendered by the
Government Records Council
On The 28th Day of June, 2016

Robin Berg Tabakin, Esq., Chair
Government Records Council

I attest the foregoing is a true and accurate record of the Government Records Council.

Steven Ritardi, Esq., Secretary
Government Records Council

Decision Distribution Date: June 29, 2016



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
June 28, 2016 Council Meeting**

**Anonymous¹
Complainant**

GRC Complaint No. 2015-107

v.

**Burlington Township (Burlington)²
Custodial Agency**

Records Relevant to Complaint: Hard copies via facsimile:

“[A]ll OPRA requests made in 2014. I am only requesting the requests themselves and not the documents released.”

Custodian of Record: Anthony J. Carnivale, Jr.

Request Received by Custodian: April 6, 2015

Response Made by Custodian: March 9, 2015

GRC Complaint Received: April 9, 2015

Background³

Request and Response:

On April 6, 2015, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On April 9, 2015, the Custodian responded in writing, denying the Complainant’s OPRA request pursuant to N.J.S.A. 47:1A-1, quoting specifically:

47:1A-1 Legislative Findings – The Legislature finds and declares it to be the public policy of this State that public records shall be readily accessible for examination by the citizens of this State, with certain exceptions, for the protections of the public interest. (Emphasis in the original).

The Custodian noted that the Complainant’s fax number originates from North Carolina.⁴

¹ No representation listed on record.

² Represented by David M. Serlin, Esq. (Moorestown, NJ).

³ The parties may have submitted additional correspondence or made additional statements/assertions in the submissions identified herein. However, the Council includes in the Findings and Recommendations of the Executive Director the submissions necessary and relevant for the adjudication of this complaint.

⁴ The fax number area code is “704” and encompasses the Charlotte, NC region. “704 Area Code.” 704. N.p., n.d. Web. 11 May 2016.

Denial of Access Complaint:

On April 9, 2015, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that the Custodian denied the request because the “internet based fax company” used by the Complainant “assigned” a North Carolina area code. The Complainant provided no other identifying information beyond the fax number and did not provide an explanation for filing anonymously.

Statement of Information:

On April 29, 2015, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on April 6, 2015, and responded in writing on April 9, 2015.

The Custodian did not build upon his April 6, 2015 response to the Complainant, which denied the OPRA request because the requestor is an out-of-state (“OOS”) requestor pursuant to N.J.S.A. 47:1A-1. The Custodian based his claim that the Complainant is an OOS requestor because the Complainant’s only contact information is the fax number, which uses a North Carolina area code.

Analysis

Abeance of Complaint

The GRC begins by noting that the Administrative Procedures Act gives the GRC broad latitude to effectuate the purposes of OPRA. N.J.S.A. 52:14B-1 et seq. Regarding the disclosability of OPRA request forms pursuant to an OPRA request, the Appellate Division is currently addressing this issue in Scheeler, Jr. v. Office of the Governor, et al., Docket No. A-1236-14T3. There, defendants are arguing that they lawfully denied access to OPRA requests based on the court’s holding in Gannett N.J. Partners, L.P. v. Cnty. of Middlesex, 379 N.J. Super. 205, 212 (App. Div. 2005). The GRC notes that it has issued a few decisions regarding the disclosability of OPRA requests in the past. *See* Wolosky v. Twp. of Parsippany-Troy Hills (Morris), GRC Complaint No. 2010-317 (March 27, 2012); Anonymous v. NJ State Police, GRC Complaint No. 2014-78 (Interim Order January 30, 2015). However, the pending decision from the Appellate Division might affect the GRC’s analysis on this issue going forward.

Considering all the issues presented, as well as the prevailing question of disclosure currently being reviewed by the Appellate Division, the instant complaint should be held in abeyance pending the Appellate Division’s decision in Scheeler. Any decision to the contrary might lead to additional litigation and could entail unnecessary costs for all parties. Additionally, by holding the complaint in abeyance, the GRC will avoid unnecessary adjudication and conserve public resources. The GRC is thus satisfied that abeyance is the most acceptable course of action at this time for all parties involved. *See, e.g.* Verry v. Franklin Fire District No. 1 (Somerset), GRC Complaint No. 2014-365 (September 2015).

Accordingly, the issue of whether the Custodian unlawfully denied access to OPRA requests made in 2014 should be held in abeyance until the Appellate Division has ruled on the consolidated appeal in Scheeler, Docket No. A-1236-14T3. Such an action will benefit all parties and give the GRC an adequate opportunity to apply the Appellate Division's decision to this complaint.

Knowing & Willful

The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the further adjudication of this complaint.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The issue of whether the Custodian unlawfully denied access to OPRA requests made in 2014 should be held in abeyance until the Appellate Division has ruled on the consolidated appeal in Scheeler, Jr. v. Office of the Governor, et al., Docket No. A-1236-14T3. Such an action will benefit all parties and give the GRC an adequate opportunity to apply the Appellate Division's decision to this complaint.
2. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the further adjudication of this complaint.

Prepared By: Samuel A. Rosado, Esq.
Staff Attorney

June 21, 2016